

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 FERNANDO HERNANDEZ, KENNETH CHOW,  
5 BRYANT WHITE, DAVID WILLIAMS,  
6 MARQUIS ACKLIN, CECILIA JACKSON,  
7 TERESA JACKSON, MICHAEL LATTIMORE,  
8 and JUANY GUZMAN, each individually,  
9 and on behalf of all other persons  
10 similarly situated,

11 Plaintiffs,

Case No.  
12-CV-4339  
(ALC) (JLC)

12 -against-

13 THE FRESH DIET, INC., LATE NIGHT  
14 EXPRESS COURIER SERVICES, INC. (FL),  
15 FRESH DIET EXPRESS CORP. (NY), THE  
16 FRESH DIET - NY INC. (NY), FRESH  
17 DIET GRAB & CO, INC. (FL) a/k/a YS  
18 CATERING HOLDINGS, INC. (FL) d/b/a  
19 YS CATERING INC. (FL), FRESH DIET  
20 EXPRESS CORP. (FL), SYED HUSSAIN,  
21 individually, JUDAH SCHLOSS,  
22 individually, and ZALMI DUCHMAN,  
23 individually,

24 Defendants.

25 -----x

Deposition of SYED HUSSAIN, taken on behalf of  
Plaintiffs, at THE HARMAN FIRM, 1776 Broadway, Suite  
2030, New York, New York 10019, commencing at 10:16  
a.m., Thursday, October 10, 2013, before Deborah  
Huntsman, a Shorthand Reporter and Notary Public of  
the State of New York.

ATKINSON-BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
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REPORTED BY: DEBORAH HUNTSMAN  
FILE NO.: A70ACAE

## 1 A P P E A R A N C E S :

## 2 FOR PLAINTIFFS:

3 THE HARMAN FIRM  
 4 BY: PETER ANDREWS, ESQ.  
 200 West 57th Street, Suite 900  
 New York, New York 10019  
 5 (212) 425-2600  
 pandrews@theharmanfirm.com  
 6

## 7 FOR DEFENDANTS:

8 KAUFMAN DOLOWICH VOLUCK  
 9 BY: YALE POLLACK, ESQ.  
 135 Crossways Park Drive, Suite 201  
 10 Woodbury, New York 11797  
 (516) 283-8743  
 11 ypollack@kdvlaw.com  
 12  
 13  
 14  
 15  
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 18  
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 20  
 21  
 22  
 23  
 24  
 25

2

1 Whereupon,

2 SYED HUSSAIN,

3 having been first duly sworn, was examined and  
 4 testified as follows:

## 5 EXAMINATION

6 BY MR. ANDREWS:

7 Q. Would you state your name for the record.

8 A. Syed Hussain.

9 Q. Would you state your address for the record.

10 A. The Fresh Diet, 588 Baltic Street, Brooklyn,  
 11 New York 11217.

12 Q. Good morning, Mr. Hussain. My name is Peter  
 13 Andrews, and I represent the Plaintiffs in this  
 14 action. You are represented by Mr. Pollack here today  
 15 as your attorney; is that correct?

16 A. Correct.

17 Q. Have you ever been deposed previously?

18 A. No.

19 Q. Let me just tell you a little bit about how  
 20 depositions work in general. It is a question and  
 21 answer format. You are under oath. You must tell the  
 22 truth in response to my questions. I will be asking  
 23 the questions. That being said, it is not a test.  
 24 There is no right answer or wrong answer. You don't  
 25 get a grade. I don't want you to speculate. I don't

4

1 IT IS HEREBY STIPULATED AND AGREED by and  
 2 between the attorneys for the respective parties  
 3 herein that filing, sealing, and certification, be and  
 4 the same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED that all  
 6 objections, except as to the form of the question,  
 7 shall be reserved to the time of trial.

8 IT IS FURTHER STIPULATED AND AGREED that the  
 9 within examination may be signed and sworn to before  
 10 any officer authorized to administer the oath with the  
 11 same force and effect as if signed and sworn to before  
 12 the Court.  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
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 25

3

1 want you to guess. I don't want you to assume about  
 2 things that you are not certain of or that you did not  
 3 experience. It is very important that your testimony  
 4 be based on your own personal recollections, your own  
 5 personal experience, and what you recall rather than  
 6 any assumptions or speculation. Do you understand  
 7 that?

8 A. Yes.

9 Q. If I ask a question that doesn't make sense to  
 10 you or it is just poorly worded or you have difficulty  
 11 understanding, let me know and I will do my best to  
 12 just strike that question and ask a different question  
 13 or ask the question in a different way. Do you  
 14 understand that?

15 A. Yes.

16 Q. We will break roughly every hour for five  
 17 minutes, just to give everyone a chance to stretch,  
 18 get water, use the men's room, and that kind of thing.  
 19 If at any other time, however, you need a break or  
 20 would like to take a break, please let me know and we  
 21 will take a break. We are not going to make you sit  
 22 here if you need a break. The only request I have is  
 23 that you do not take a break while one of my questions  
 24 is pending, and that you answer my question before  
 25 requesting a break.

5

1 I see that you have brought your cellphone with  
2 you today. I do request, just to maintain the  
3 continuity of the deposition, that you do not use your  
4 cellphone to check text messages or e-mails while we  
5 are going back and forth with the questions. If you  
6 need to take a break to check your e-mails or text  
7 messages, that is the time to do it.

8 A. Okay.

9 Q. Are you on any medications that would impair  
10 your ability to testify?

11 A. No.

12 Q. One final thing. As far as depositions, it is  
13 very important that we not speak at the same time. So  
14 let me ask the question first, and then you will  
15 answer. And I will do the same. Secondly, we have  
16 our court reporter who is taking down everything  
17 verbally. Therefore, it is very important that your  
18 answers be verbal answers. So avoid saying things  
19 like uh-huh or making body gestures, because she can't  
20 take that down. So with that being said, let's begin.

21 You previously worked for a company called  
22 Balance for Life; is that correct?

23 A. Yes.

24 Q. When did you work for Balance for Life?

25 A. I don't recall the exact dates.

6

1 Kingdom?

2 A. No.

3 Q. Did you go to high school in the United States?

4 A. No.

5 Q. Did there come a point in time when you came to  
6 the United States from the United Kingdom?

7 A. Yes.

8 Q. Do you recall when that was?

9 A. 1996.

10 Q. So you would have been about 19 years old?

11 A. Yes.

12 Q. Were you in school at the time that you  
13 immigrated to the United States?

14 A. I had just finished high school.

15 Q. You had finished high school in the United  
16 Kingdom?

17 A. In Canada.

18 Q. Did you go to Canada after leaving the United  
19 Kingdom?

20 A. Yes.

21 Q. So the chronology is that you were in the  
22 United Kingdom and then you moved to Canada?

23 A. Correct.

24 Q. Then you moved to the United States?

25 A. Correct.

8

1 Q. Do you recall when you first started working  
2 for them?

3 A. No.

4 Q. Would it have been before 1990 or after 1990?

5 A. After.

6 Q. Would it have been after 1995?

7 A. Yes.

8 Q. Would it have been before 2000 or after 2000?

9 A. After 2000.

10 Q. How long did you work at Balance for Life?

11 A. I am not sure about the exact time.

12 Q. I am not asking for dates. I am asking for an  
13 approximate length of time?

14 A. Years.

15 Q. Five years?

16 A. I would say between two to three years.

17 Q. Between two to three years?

18 A. Yes.

19 Q. What is your date of birth?

20 A. January 18, 1977.

21 Q. Were you born in the United States?

22 A. No.

23 Q. Where were you born?

24 A. United Kingdom.

25 Q. Did you go to high school in the United

7

1 Q. How old were you when you moved to Canada?

2 A. 15.

3 Q. Did you move to Canada with your family?

4 A. Yes.

5 Q. Where did you live in Canada?

6 A. Montreal.

7 Q. Montreal?

8 A. Yes.

9 Q. And you attended high school in Canada?

10 A. Correct.

11 Q. Did you graduate high school?

12 A. Yes.

13 Q. That was in Montreal?

14 A. Yes.

15 Q. You were approximately 18 years old when you  
16 graduated high school?

17 A. Yes.

18 Q. When you graduated from high school in Canada,  
19 did you get a job in Canada?

20 A. No.

21 Q. About a year later, you decided to come to the  
22 United States?

23 A. Yes.

24 Q. Did you come with your family?

25 A. Yes.

9

1 Q. Where did you move to when you came to the  
 2 United States?  
 3 A. To Queens.  
 4 Q. So when you first arrived in the United States  
 5 in Queens in 1977 -- is that when it would have been?  
 6 A. I am sorry?  
 7 Q. Your birth date is 1977. I stand corrected.  
 8 You moved to Queens when you were 19 years old in  
 9 about 1996?  
 10 A. Yes.  
 11 Q. When you arrived in Queens at the age of 19 in  
 12 1996, did you get a job at that time?  
 13 A. No.  
 14 Q. How long were you without work in the United  
 15 States?  
 16 A. I do not remember.  
 17 Q. Was it a year or more than a year?  
 18 A. More.  
 19 Q. More than a year. Were you living with your  
 20 family at the time?  
 21 A. Yes.  
 22 Q. At some point you did get a job?  
 23 A. Yes.  
 24 Q. What was your first job in the United States?  
 25 A. I worked at Ranch 1.

10

1 A. Yes.  
 2 Q. On those days that you were working at Ranch 1,  
 3 can you describe what your typical day was like?  
 4 A. I do not remember that now. It was a long time  
 5 ago.  
 6 Q. Do you recall how you made deliveries at the  
 7 time?  
 8 A. Do you mean -- are you asking if I used a  
 9 vehicle, or if I was on foot, or a bicycle? Is that  
 10 what you mean?  
 11 Q. Yes.  
 12 A. On foot.  
 13 Q. How long were you employed at Ranch 1?  
 14 A. I do not remember the dates.  
 15 Q. I am not asking about the dates. Was it a  
 16 year?  
 17 A. I do not remember the time.  
 18 Q. Again, it is important that we not talk at the  
 19 same time, otherwise she can't take it down. Is  
 20 making deliveries to customers the only duties you had  
 21 at Ranch 1?  
 22 A. Yes.  
 23 Q. You didn't perform any other services for Ranch  
 24 1?  
 25 A. No.

12

1 Q. That is a fast-food restaurant?  
 2 A. Yes.  
 3 Q. Do you recall where that was?  
 4 A. 42nd Street.  
 5 Q. In Manhattan?  
 6 A. Yes.  
 7 Q. What did you do at the Ranch 1?  
 8 A. I did deliveries.  
 9 Q. Can you explain in general terms how that  
 10 worked?  
 11 MR. POLLACK: Objection.  
 12 Q. Do you understand the question?  
 13 A. How what worked?  
 14 Q. In doing deliveries for Ranch 1, you would have  
 15 to go to the Ranch 1 restaurant?  
 16 A. Yes.  
 17 MR. POLLACK: Objection.  
 18 Q. Did you work every day?  
 19 MR. POLLACK: Objection.  
 20 A. I do not remember.  
 21 Q. So Ranch 1 would make deliveries to customers;  
 22 is that correct?  
 23 MR. POLLACK: Objection.  
 24 A. Yes.  
 25 Q. They would ask you to make those deliveries?

11

1 Q. Do you recall if you were an employee of Ranch  
 2 1?  
 3 MR. POLLACK: Objection.  
 4 A. I do not recall.  
 5 Q. Do you recall how it came about that you left  
 6 Ranch 1?  
 7 MR. POLLACK: Objection.  
 8 A. No.  
 9 Q. Did you leave Ranch 1 at some point?  
 10 A. Yes.  
 11 Q. What did you do after leaving Ranch 1?  
 12 MR. POLLACK: Objection.  
 13 A. I do not remember.  
 14 Q. Did you have a job after leaving Ranch 1?  
 15 A. I did get a job, but I do not remember the  
 16 time.  
 17 Q. I am not asking you about the time. I am  
 18 asking you about the job. Do you remember your first  
 19 job after Ranch 1?  
 20 A. No.  
 21 Q. Do you remember what type of work you were  
 22 doing after Ranch 1?  
 23 A. There was a period of time that I don't recall.  
 24 Q. I am not asking you about the time. I am  
 25 asking you about the work you did.

13

1 A. There were other jobs, yes. But I do not  
 2 remember all of them.

3 Q. In general, can you tell me what types of other  
 4 jobs you have had after leaving Ranch 1?

5 A. I worked for a company doing data entry for  
 6 sorting mail. Something to do with mail. I worked at  
 7 FAO Schwarz doing retail sales. I worked at a company  
 8 called Global Credit Services. I started in the  
 9 mailroom, and I eventually became a junior credit  
 10 analyst. Those are the jobs that I recall.

11 Q. Let's go back to the Balance for Life. Before  
 12 beginning working for Balance for Life, what were you  
 13 doing right before working for Balance for Life?

14 A. I was working in Borders, the book store.

15 Q. What location was that?

16 A. The one in the Time Warner Building.

17 Q. Were you a salesperson?

18 A. I was the retail sales and I work overnight  
 19 shifts as well.

20 Q. On overnight shifts, what did you do?

21 A. Stocking shelves.

22 Q. How long approximately were you at Borders for?

23 A. I really don't know.

24 Q. Was it over a year, under a year?

25 A. I don't know.

14

1 Q. Were you still employed at Borders?

2 A. No.

3 Q. You had left Borders?

4 MR. POLLACK: Objection.

5 A. Yes.

6 Q. Do you recall why you left Borders?

7 A. No.

8 Q. Do you recall how long you were unemployed  
 9 between the time you left Borders and the time you  
 10 began working for Balance for Life?

11 A. No.

12 Q. Was it more than 6 months?

13 A. No.

14 Q. It was less than 6 months?

15 A. Yes.

16 Q. You were looking for work at that time?

17 A. Yes.

18 Q. Which would have been sometime after 2000?

19 A. Yes.

20 Q. Do you recall the ad that you saw that said  
 21 that they were looking for delivery drivers?

22 A. Yes.

23 Q. Had you ever been a delivery driver for any  
 24 company previously?

25 A. No.

16

1 Q. You don't remember?

2 A. No.

3 Q. Before working for Borders, do you remember the  
 4 job that you had immediately before working for  
 5 Borders?

6 A. No.

7 Q. Let's go to Balance for Life. Do you recall  
 8 how you first began working for Balance for Life?

9 MR. POLLACK: Objection.

10 A. I don't understand what you mean.

11 Q. How did you first learn that there was an  
 12 opportunity to work for Balance for Life?

13 A. There was a job posting on the internet.

14 Q. Was that on Craigslist?

15 A. Yes.

16 Q. What do you recall about what you saw in that  
 17 job posting?

18 A. I don't remember what the posting said now.

19 Q. Do you know what type of job they were seeking  
 20 to fill?

21 A. Delivery drivers.

22 Q. Just going back to that time when you saw that  
 23 job posting, why were you interested in applying for  
 24 that job?

25 A. I was looking for a job.

15

1 Q. You responded to the ad?

2 A. Yes.

3 Q. Do you recall how you responded to the ad?

4 A. Phone call.

5 Q. They asked you to come in for an interview?

6 A. Yes.

7 Q. Do you recall where that was?

8 A. I don't know the address.

9 Q. Was it in Manhattan?

10 A. Yes, in Manhattan.

11 Q. Do you recall at this initial interview the  
 12 company explaining what type of position they were  
 13 seeking to fill?

14 A. I don't recall the details of the conversation.

15 Q. But they were trying to hire a delivery person?

16 MR. POLLACK: Objection.

17 A. Correct.

18 Q. Did they explain to you what your  
 19 responsibilities would be if you were hired?

20 MR. POLLACK: Objection.

21 A. Yes.

22 Q. What do you recall about what they told you  
 23 they expected someone to do if they hired them?

24 A. I am sorry. Could you repeat that.

25 Q. When you went in for your interview and they

17

1 explained what the job entailed, did they explain what  
 2 they expected you to do if you went to work for them?  
 3 A. Yes.  
 4 Q. Do you recall what they explained to you about  
 5 the job?  
 6 A. Like I said, I do not remember the details of  
 7 the conversation, but it was basically about making  
 8 the deliveries.  
 9 Q. Did they tell you what kind of company Balance  
 10 for Life was?  
 11 A. No.  
 12 Q. Was there just one interview?  
 13 A. Yes.  
 14 Q. Did they hire you at the interview?  
 15 A. Yes.  
 16 Q. Did you begin working for them right after  
 17 that?  
 18 A. Right after as in?  
 19 Q. Within a week?  
 20 A. Yes.  
 21 Q. Let's go to the time you first began working  
 22 for Balance for Life. How did that job start? What I  
 23 mean by that is, what were your initial duties at  
 24 Balance for Life once you began working for them?  
 25 A. I was delivering food to clients' residences.

18

1 A. Yes.  
 2 Q. Did you have a supervisor at that time?  
 3 MR. POLLACK: Objection.  
 4 A. Yes.  
 5 Q. Do you recall who that person was?  
 6 A. No.  
 7 Q. Do you recall what his job was?  
 8 MR. POLLACK: Objection.  
 9 A. No.  
 10 Q. At that time when you first began working for  
 11 Balance for Life, you did not supervise anyone  
 12 yourself?  
 13 A. Correct.  
 14 Q. You obtained meals from their facility and you  
 15 delivered them to customers?  
 16 MR. POLLACK: Objection.  
 17 A. Correct.  
 18 Q. Did you receive any training from Balance for  
 19 Life initially in order to do this job?  
 20 A. No.  
 21 Q. How was the job performed from your end, when  
 22 you would go to the facility? Could you describe  
 23 that?  
 24 A. I am trying to remember. It was a long time  
 25 ago.

20

1 Q. Do you recall where you would get the food  
 2 from?  
 3 A. From their facility.  
 4 Q. Where was that?  
 5 A. In Manhattan.  
 6 Q. Do you recall where in Manhattan?  
 7 A. I do not remember the address.  
 8 Q. Do you recall the neighborhood?  
 9 A. I think it was the meat packing district.  
 10 Q. At that time when you first began working for  
 11 them, what hours did you typically work?  
 12 A. I do not remember that.  
 13 Q. Did you work at night?  
 14 A. Yes.  
 15 Q. Did you work during the day?  
 16 A. No.  
 17 Q. Did the job involve delivering meals at night  
 18 to customers?  
 19 A. Yes.  
 20 Q. Was the goal to have the meals delivered to the  
 21 customers by the morning?  
 22 MR. POLLACK: Objection.  
 23 A. By the morning?  
 24 Q. Let me rephrase the question. Were you trying  
 25 to get the meals delivered to the customers overnight?

19

1 Q. Let me try to break it down. On those days  
 2 that you worked or those evenings that you worked, you  
 3 would have to report to the facility?  
 4 MR. POLLACK: Objection.  
 5 Q. Is that correct?  
 6 A. I would have to go to the facility?  
 7 Q. Yes.  
 8 A. Yes.  
 9 Q. Were you on a set schedule?  
 10 A. Yes.  
 11 Q. How did you know when you had to go to the  
 12 facility?  
 13 A. Typically based on when the food would be  
 14 ready.  
 15 Q. But how would you know that?  
 16 A. Just word of mouth, I guess.  
 17 Q. Would your supervisor call you?  
 18 A. I did not have a direct supervisor. The person  
 19 who was there was the manager of the facility.  
 20 Q. But you would go there when the food was ready  
 21 to be delivered?  
 22 A. Yes.  
 23 Q. My question was: how would you know when the  
 24 food was ready to be delivered?  
 25 A. I guess it is something that was just told to

21

1 us, that typically the food is ready every day around  
2 3:00, or 4:00, or whatever the time would be. And we  
3 would just show up around that time.

4 Q. Do you recall how many other drivers were  
5 working with you at around that time?

6 A. No.

7 Q. Was it more than 10?

8 A. No.

9 Q. Do you recall there being a written schedule  
10 for you?

11 A. No.

12 Q. When you first began working for Balance for  
13 Life, how many nights a week were you delivering food?

14 A. I do not remember.

15 Q. Was it a fulltime job though?

16 MR. POLLACK: Objection.

17 A. No.

18 Q. Do you recall how many hours a week you were  
19 working?

20 A. No.

21 Q. Now, you said it wasn't a fulltime job?

22 A. No.

23 Q. Could you explain what you mean by that?

24 MR. POLLACK: Objection.

25 A. As in I didn't work 40 hours a week.

22

1 delivered?

2 A. I do not remember.

3 Q. Do you recall whether you were paid by the  
4 amount of time you were out delivering food?

5 MR. POLLACK: Objection.

6 A. I don't know.

7 Q. Do you recall if you were paid by the number of  
8 miles you had driven?

9 A. I don't remember.

10 MR. POLLACK: Objection.

11 Q. Do you recall if you were paid an hourly rate?

12 MR. POLLACK: Objection.

13 A. I don't remember.

14 Q. Do you recall if you were paid a fixed salary?

15 A. No.

16 Q. Did your earnings fluctuate from week to week?

17 A. Yes.

18 Q. So some weeks you made more money than other  
19 weeks?

20 A. Yes.

21 Q. So it was not a fixed salary?

22 A. No.

23 Q. Did you ever ask anyone at Balance for Life how  
24 you were being paid?

25 A. Not that I recall.

24

1 Q. So you were working less than 40 hours a week?

2 A. Yes.

3 Q. Did you want to work more than 40 hours?

4 A. Yes.

5 Q. There just wasn't that work available?

6 A. Correct.

7 Q. Were you doing any other work?

8 A. No.

9 Q. So this was your sole employment?

10 A. Correct.

11 Q. Do you recall how you were compensated when you  
12 first began working for Balance for Life?

13 A. What do you mean by "compensated"? Do you mean  
14 the pay rate or if I was getting paid by cash or  
15 check? What do you mean?

16 Q. How did Balance for Life determine how much  
17 money to pay you each week?

18 MR. POLLACK: Objection.

19 A. I don't know.

20 Q. Did they ever explain to you how they were  
21 going to pay you?

22 A. I am sure they did.

23 Q. Do you recall that?

24 A. No.

25 Q. Were you paid by the number of meals that you

23

1 Q. So we were talking now about when you first  
2 began working for Balance for Life. Did there ever  
3 come a point in time where your responsibilities at  
4 Balance for Life changed from when you first started  
5 working for the company?

6 A. Yes.

7 Q. Could you describe the first change?

8 MR. POLLACK: Objection.

9 A. I think it was they gave me a position in the  
10 office.

11 Q. So you were a delivery driver and then they  
12 gave you a position in the office?

13 A. Correct.

14 Q. Did you stop doing deliveries at that time?

15 A. No.

16 Q. You were continuing to do deliveries?

17 A. Yes.

18 MR. POLLACK: Objection.

19 Q. So you were working in the office and you were  
20 also continuing to make deliveries?

21 MR. POLLACK: Objection.

22 Q. Is that correct?

23 A. Correct.

24 Q. Do you recall what type of office position was  
25 given to you at that time?

25

1 A. Do you mean if there was a title?

2 Q. No. What were you doing? What were your

3 duties?

4 MR. POLLACK: Objection.

5 A. Data entry.

6 Q. Anything else other than data entry?

7 A. I do not remember.

8 Q. But you were also continuing to make

9 deliveries?

10 MR. POLLACK: Objection.

11 A. Yes.

12 Q. Do you recall what type of data you were

13 entering?

14 A. I think it was clients' addresses, client

15 information.

16 Q. When this first change took place, do you

17 recall how your time was allocated between your two

18 roles at the company?

19 A. What do you mean?

20 Q. What percentage of the time did you spend in

21 the office doing data entry and what percentage of the

22 time were you out making deliveries?

23 A. I don't know.

24 Q. Was more than half of your time spent still

25 making deliveries?

26

1 go out and deliver food?

2 A. Yes.

3 Q. Did you have to get off of the data entry shift

4 and return back to the facility to begin the delivery

5 work?

6 MR. POLLACK: Objection.

7 Q. Do you understand the question?

8 A. No.

9 Q. On those days that you were doing both data

10 entry work and deliveries, would you do data entry

11 work and then start making deliveries once your data

12 entry work was done?

13 MR. POLLACK: Objection.

14 A. I don't recall.

15 Q. You don't recall. Would you go home between

16 finishing the data entry work and coming back to make

17 deliveries?

18 A. I don't remember.

19 Q. Do you recall if the data entry position had a

20 title?

21 A. Not that I know of.

22 Q. Do you recall how you were compensated by

23 Balance for Life at that time when you first obtained

24 a data entry position?

25 A. No.

28

1 MR. POLLACK: Objection.

2 A. I do not remember.

3 Q. Once you were working two different roles

4 within the company, did the number of hours you were

5 working per week increase?

6 A. Yes.

7 Q. At the time that you obtained the data entry

8 position, as well as continuing to deliver food, were

9 you working in excess of 40 hours per week typically?

10 A. I don't remember.

11 Q. Would you consider yourself to have been

12 working fulltime at that time?

13 MR. POLLACK: Objection.

14 A. No.

15 Q. Did you want to work additional hours at that

16 time?

17 MR. POLLACK: Objection.

18 A. Yes.

19 Q. The data entry work that you were doing, was

20 that performed during the day?

21 A. Yes.

22 Q. Do you recall how many days a week you were

23 doing data entry at that time?

24 A. I don't recall how many days.

25 Q. Would you do data entry during the day and then

27

1 Q. Do you recall if they were paying you an hourly

2 rate for doing data entry?

3 A. Yes.

4 Q. They were paying you an hourly rate for doing

5 data entry?

6 A. Yes.

7 Q. Was that different than how they were paying

8 you for the deliveries?

9 A. Yes.

10 Q. Do you recall at that time, once you started

11 doing data entry, how they were paying you for the

12 deliveries?

13 A. No.

14 Q. But you do recall that there was a difference

15 in how you were being paid?

16 MR. POLLACK: Objection.

17 A. Yes.

18 Q. So this brings us to the time when you were

19 doing both data entry and continuing to make

20 deliveries for Balance for Life. Did there ever come

21 a point after that where your responsibilities changed

22 again for the Balance for Life company?

23 A. Yes.

24 Q. What was the next change after that?

25 A. I was doing operations for the New York

29



1 facility.  
 2 Q. Were you continuing to deliver food as well?  
 3 MR. POLLACK: Objection.  
 4 A. No.  
 5 Q. So you stopped delivering food?  
 6 MR. POLLACK: Objection.  
 7 A. Yes.  
 8 Q. And you were doing operations in New York?  
 9 A. Yes.  
 10 MR. POLLACK: Objection.  
 11 Q. What was your title, if you recall, in that  
 12 position?  
 13 A. I don't recall having a title.  
 14 Q. Did you have an office?  
 15 A. Yes.  
 16 Q. Do you recall who you reported to at that time  
 17 when you started doing operations work?  
 18 MR. POLLACK: Objection.  
 19 A. The owner of the company.  
 20 Q. Is that Mr. Sutter?  
 21 A. Yes.  
 22 Q. Where was Mr. Sutter located?  
 23 A. Florida.  
 24 Q. So he was not based in New York?  
 25 MR. POLLACK: Objection.

30

1 Q. At that time when you became responsible for  
 2 operations at the New York facility, how many  
 3 customers was the New York facility servicing?  
 4 A. I don't remember that.  
 5 Q. Was it over 500?  
 6 A. I do not remember that.  
 7 Q. You don't remember a ballpark figure?  
 8 MR. POLLACK: Objection.  
 9 A. No.  
 10 Q. Do you recall how many drivers were working for  
 11 the company at the time?  
 12 A. No.  
 13 Q. Were you in charge of supervising the drivers?  
 14 MR. POLLACK: Objection.  
 15 Q. Was there someone else who was in charge of  
 16 supervising the drivers?  
 17 A. No.  
 18 Q. How did the drivers know what to do?  
 19 MR. POLLACK: Objection.  
 20 A. Know what to do as far as?  
 21 Q. As far as getting their deliveries done in the  
 22 right way and on time?  
 23 A. When I would hire them, I would let them know  
 24 the delivery times and what was expected.  
 25 Q. Do you recall approximately how many drivers

32

1 A. No.  
 2 Q. But you were based in New York?  
 3 A. Yes.  
 4 Q. Were you in charge of operations at the New  
 5 York facility at that time?  
 6 MR. POLLACK: Objection.  
 7 A. Yes.  
 8 Q. Was there anyone above you at the New York  
 9 facility that you had to report to?  
 10 MR. POLLACK: Objection.  
 11 A. No.  
 12 Q. So you reported directly to Mr. Sutter?  
 13 MR. POLLACK: Objection.  
 14 A. Yes.  
 15 Q. Can you describe what your responsibilities  
 16 were when you first began handling operations at the  
 17 New York facility?  
 18 A. Coordinating with customer service regarding  
 19 client complaints, coordinating with the kitchen,  
 20 speaking to clients about renewals.  
 21 Q. Anything else that you recall?  
 22 A. I was still continuing the data entry. I was  
 23 hiring delivery drivers. It was basically the entire  
 24 operation of New York, from overseeing the food being  
 25 prepared to the meals being delivered.

31

1 you hired at Balance for Life?  
 2 A. No.  
 3 Q. Was it more than 10?  
 4 A. Yes.  
 5 Q. Do you recall, at the time that you became in  
 6 charge of hiring drivers for Balance for Life, how  
 7 drivers were compensated by Balance for Life?  
 8 A. No.  
 9 Q. Do you recall interviewing drivers?  
 10 A. Yes.  
 11 Q. Do you recall, when interviewing drivers for  
 12 positions at Balance for Life, explaining to them how  
 13 they would be paid?  
 14 A. Yes.  
 15 Q. Do you recall those discussions?  
 16 A. No.  
 17 Q. Do you recall in general how you explained to  
 18 them how they would be paid?  
 19 A. I do not remember how the pay structure was set  
 20 up.  
 21 Q. But you recall explaining how it was set up to  
 22 them?  
 23 MR. POLLACK: Objection.  
 24 A. Yes.  
 25 Q. That would have been your role in the interview

33

1 process?

2 MR. POLLACK: Objection.

3 A. I am sorry. What do you mean?

4 Q. When interviewing people who were applying for  
5 positions as drivers is one of the things that you  
6 would have to do is explain to them how they would be  
7 paid?

8 A. Yes.

9 Q. If drivers had questions as to how they were  
10 being paid, would you be the person that they would  
11 ask?

12 MR. POLLACK: Objection.

13 A. Yes.

14 Q. Do you recall drivers' ever asking you about  
15 their pay?

16 A. No.

17 Q. Do you recall how the actual payroll system was  
18 handled at Balance for Life when you became in charge  
19 of operations?

20 MR. POLLACK: Objection.

21 A. No.

22 Q. Were you in charge of payroll distribution?

23 A. What do you mean by "payroll distribution"?  
24 Handing out checks?

25 Q. Did you have to hand out checks to the drivers?

34

1 MR. POLLACK: Objection.

2 A. I don't know. I don't remember.

3 Q. Do you remember whether you received a W-2 form  
4 from Balance for Life?

5 A. I do not remember.

6 Q. Do you recall ever receiving a 1099 from  
7 Balance for Life?

8 A. I don't recall.

9 Q. How would you report to Mr. Sutter if he was in  
10 Florida?

11 A. E-mail, phone call.

12 Q. Did Mr. Sutter visit the New York facility  
13 occasionally?

14 A. Yes.

15 Q. How often did Mr. Sutter visit?

16 A. I do not remember that.

17 Q. Did he visit frequently?

18 MR. POLLACK: Objection.

19 A. I do not remember that.

20 Q. Did you ever assume any other role at Balance  
21 for Life other than head of operations for the New  
22 York facility?

23 MR. POLLACK: Objection.

24 A. No.

25 Q. That was the position that you held up until

36

1 A. Yes.

2 Q. Did you prepare those checks?

3 MR. POLLACK: Objection.

4 A. How?

5 Q. Did you enter data into a computer that was  
6 used to calculate the checks?

7 A. I don't recall.

8 Q. Was there a payroll processing company that  
9 Balance for Life used?

10 A. I do not remember.

11 Q. Do you recall where the checks came from before  
12 you distributed them to the drivers?

13 MR. POLLACK: Objection.

14 A. No.

15 Q. When you became in charge of operations at  
16 Balance for Life in the New York facility, how were  
17 you compensated?

18 A. I do not remember.

19 Q. Were you paid a salary?

20 A. I don't recall.

21 Q. Do you recall being paid on the basis of the  
22 number of hours you worked?

23 A. No. I do not remember.

24 Q. Do you recall if you were an employee of  
25 Balance for Life?

35

1 the time you stopped working for Balance for Life?

2 A. Yes.

3 Q. Do you recall that there came a time when you  
4 were told that Balance for Life was going to be sold?

5 A. No.

6 Q. Do you recall a time when someone may have told  
7 you that Balance for Life was going to go out of  
8 business?

9 A. No.

10 Q. Do you recall that Mr. Sutter eventually sold  
11 his interest in Balance for Life?

12 MR. POLLACK: Objection.

13 A. Yes.

14 Q. You recall that?

15 MR. POLLACK: Objection.

16 A. I recall this and I know that it happened, but  
17 I do not remember a conversation about it.

18 Q. Do you recall at some point you stopped working  
19 for Balance for Life?

20 A. Yes.

21 Q. What do you recall about when you stopped  
22 working for Balance for Life?

23 MR. POLLACK: Objection.

24 Q. Strike that. Let me ask a different question.  
25 Do you recall when you stopped working for Balance for

37

1 Life?  
 2 A. When?  
 3 Q. What year?  
 4 A. 2007.  
 5 Q. Approximately 2007?  
 6 A. Yes.  
 7 Q. Do you recall what happened in 2007 that caused  
 8 you to stop working for Balance for Life?  
 9 A. No.  
 10 Q. Do you recall ever being told that you would no  
 11 longer be working for Balance for Life?  
 12 A. I do not remember the conversation about it.  
 13 But I mean, I know I got the information. I just  
 14 don't remember how it happened.  
 15 Q. When you stopped working for Balance for Life,  
 16 what was the position that you assumed next?  
 17 MR. POLLACK: Objection.  
 18 A. There wasn't a title. There wasn't really a  
 19 position.  
 20 Q. What kind of work did you do after stopping to  
 21 work for Balance for Life?  
 22 A. I was doing deliveries.  
 23 Q. For which company were you doing deliveries?  
 24 A. For which company? Balance for Life.  
 25 Q. No. I mean once you stopped working for

38

1 MR. POLLACK: Objection.  
 2 A. Occasionally.  
 3 Q. But that was not your primary responsibility as  
 4 head of operations?  
 5 A. No.  
 6 Q. So somehow you became aware of the fact that  
 7 Balance for Life was being sold?  
 8 A. Correct.  
 9 Q. That would have been in approximately 2007; is  
 10 that right?  
 11 MR. POLLACK: Objection.  
 12 A. I assume, yes.  
 13 Q. Were you offered another position by anyone at  
 14 that time?  
 15 A. Not that I recall.  
 16 MR. POLLACK: Objection.  
 17 Q. Do you recall being offered an opportunity to  
 18 make deliveries for Late Night?  
 19 A. Yes.  
 20 Q. Do you recall who was the first person who told  
 21 you that about Late Night?  
 22 A. Yosef Schwartz.  
 23 Q. How did you meet Yosef Schwartz?  
 24 MR. POLLACK: Objection.  
 25 A. I don't understand what you mean by "how"?

40

1 Balance for Life.  
 2 A. After it got sold?  
 3 Q. Yes.  
 4 A. Then it was Late Night.  
 5 Q. You recall that Balance for Life was sold at  
 6 some point?  
 7 A. Yes.  
 8 Q. Do you recall to whom it was sold?  
 9 A. I do not remember if I was told to whom it was  
 10 sold.  
 11 Q. Do you remember Mr. Sutter telling you that he  
 12 was selling Balance for Life?  
 13 A. No. But I am sure we had the conversation. I  
 14 don't recall it.  
 15 Q. If you don't remember it, why are you sure that  
 16 you had a conversation with Mr. Sutter?  
 17 MR. POLLACK: Objection.  
 18 A. It probably would be the only way I would get  
 19 the information.  
 20 Q. At the time that you stopped working for  
 21 Balance for Life, you were head of operations of the  
 22 New York facility of Balance for Life?  
 23 A. Correct.  
 24 Q. You were not making food deliveries at that  
 25 time?

39

1 Q. Did you meet Mr. Schwartz at some point in  
 2 time?  
 3 A. Yes.  
 4 Q. Do you recall the circumstances under which you  
 5 first met Mr. Schwartz?  
 6 A. No.  
 7 Q. Did he come to the Balance for Life facility?  
 8 A. Yes.  
 9 Q. Were you introduced to him by somebody?  
 10 A. Not that I recall.  
 11 Q. Do you recall his introducing himself to you?  
 12 A. No.  
 13 Q. Do you recall introducing yourself to him?  
 14 A. No.  
 15 Q. But you recall meeting him?  
 16 A. Yes.  
 17 Q. Do you recall what you discussed in general  
 18 when you first met him?  
 19 A. No.  
 20 Q. Did Mr. Schwartz tell you that he had work for  
 21 you?  
 22 MR. POLLACK: Objection.  
 23 A. No. I don't recall.  
 24 Q. Do you recall Mr. Schwartz asking whether you  
 25 were interested in working for Late Night?

41

1 A. I don't recall that.  
 2 Q. But at some point you began working for Late  
 3 Night?  
 4 A. Correct.  
 5 Q. Was there a gap in time between your work for  
 6 Balance for Life and Late Night or did you immediately  
 7 begin working for Late Night after stopping to work  
 8 for Balance for Life?  
 9 A. I am not sure. I do not remember.  
 10 Q. When you first began working for Late Night,  
 11 what were you doing for Late Night?  
 12 A. Deliveries.  
 13 Q. Did you have an operational management role for  
 14 Late Night at that time?  
 15 A. No.  
 16 Q. At that time you were making deliveries one  
 17 hundred percent of your time for Late Night?  
 18 MR. POLLACK: Objection.  
 19 A. Yes.  
 20 Q. So in essence you were going back to doing  
 21 something different than you had done earlier in your  
 22 career; is that correct?  
 23 MR. POLLACK: Objection.  
 24 A. Yes.  
 25 Q. At that time, when you first began working for

42

1 Q. Did the building continue to be used?  
 2 MR. POLLACK: Objection.  
 3 A. I don't know.  
 4 Q. When you began making deliveries for Late  
 5 Night, were these deliveries of meals?  
 6 A. Yes.  
 7 Q. Were you delivering anything other than meals?  
 8 A. No.  
 9 Q. Where were you delivering meals from?  
 10 A. I think it was from White Plains.  
 11 Q. From White Plains. Do you recall what was it  
 12 at White Plains that you were picking up the meals  
 13 from?  
 14 A. Do I recall the facility?  
 15 Q. What type of location was it that you were  
 16 receiving the meals from?  
 17 A. It was White Plains. I think there is a mall  
 18 there. So it was within the mall.  
 19 Q. Was it a restaurant?  
 20 A. I think so.  
 21 Q. You would have to go to that location and pick  
 22 up meals and deliver them to customers?  
 23 A. Correct.  
 24 Q. Do you recall who you reported to at that time  
 25 when you first began working at Late Night?

44

1 Late Night, did you supervise other delivery drivers?  
 2 A. No.  
 3 Q. Do you recall what Late Night's business was in  
 4 general?  
 5 A. No.  
 6 Q. Do you recall if they delivered meals?  
 7 MR. POLLACK: Objection.  
 8 A. Yes.  
 9 Q. Do you recall when you first heard of a company  
 10 called The Fresh Diet?  
 11 A. No.  
 12 MR. POLLACK: Objection.  
 13 Q. Do you recall ever hearing of a company called  
 14 The Fresh Diet?  
 15 A. Yes.  
 16 Q. Would it have been around the same time that  
 17 you heard about Late Night?  
 18 MR. POLLACK: Objection.  
 19 A. I am not sure.  
 20 Q. At the time when Balance for Life was sold, do  
 21 you recall what happened to the New York facility of  
 22 Balance for Life that you were the operations manager  
 23 for?  
 24 MR. POLLACK: Objection.  
 25 A. No.

43

1 MR. POLLACK: Objection.  
 2 A. No.  
 3 Q. Do you recall how you were compensated when you  
 4 began working at Late Night?  
 5 MR. POLLACK: Objection.  
 6 A. No.  
 7 Q. Do you recall that you were compensated for  
 8 making deliveries?  
 9 A. Yes.  
 10 Q. Do you recall if you were paid a salary?  
 11 MR. POLLACK: Objection.  
 12 A. I don't recall.  
 13 Q. Do you recall if they paid you by the hour?  
 14 MR. POLLACK: Objection.  
 15 A. No.  
 16 Q. Do you recall if they paid you by the number of  
 17 stops?  
 18 MR. POLLACK: Objection.  
 19 A. No.  
 20 Q. Do you recall if they paid you by the number of  
 21 meals you actually dropped off?  
 22 MR. POLLACK: Objection.  
 23 A. No.  
 24 Q. Do you recall if they paid you by the number of  
 25 miles you had driven?

45

1 A. No.

2 Q. When you first began making meal deliveries for

3 Late Night, what geographic area were you covering in

4 making deliveries?

5 A. I do not remember.

6 Q. Was it in the tri-state area?

7 A. Yes.

8 Q. Were you making deliveries in New York State?

9 A. Yes.

10 Q. Were you making deliveries in New Jersey?

11 A. Yes.

12 Q. Were you making deliveries in Connecticut?

13 A. No.

14 Q. When you first began working with Late Night,

15 do you recall approximately how many meals you were

16 delivering each night?

17 A. No.

18 Q. Did you use your own car to make these

19 deliveries?

20 A. Yes.

21 Q. What type of car did you have at that time?

22 A. A Honda Civic.

23 Q. Do you recall if there was somebody in charge

24 of the location in White Plains at the time that you

25 first began picking up meals from that location to

46

1 at the White Plains facility?

2 A. There was not.

3 Q. Do you recall if there was a Fresh Diet manager

4 at the White Plains facility?

5 A. There was not.

6 Q. When you first began making these deliveries of

7 meals for Late Night, if you had any questions or

8 issues, who would you contact?

9 MR. POLLACK: Objection.

10 A. Yosef Schwartz.

11 Q. Where was Mr. Schwartz located at that time?

12 A. I don't know.

13 Q. Did you see him in New York?

14 A. Yes.

15 Q. Did you sometimes just have to call him on the

16 phone?

17 A. Yes.

18 Q. So it is your testimony, just so I am clear, to

19 the extent that you had a question about what you were

20 supposed to be doing at that time, Mr. Schwartz was

21 the person you would have to deal with?

22 MR. POLLACK: Objection.

23 A. Correct.

24 Q. Do you recall if you had yourself signed any

25 type of independent contract or agreement with Late

48

1 deliver?

2 A. No.

3 Q. Would these meals be delivered typically at

4 night?

5 A. Yes.

6 Q. So you would go to the White Plains location at

7 some point in the afternoon or evening to obtain the

8 meals; is that correct?

9 A. Yes.

10 Q. How did you know when to go in to get the

11 meals?

12 A. I do not remember.

13 Q. Do you remember if you had a specific schedule?

14 A. No.

15 Q. No you don't remember or no, you did not?

16 A. No.

17 Q. You did not have a specific schedule?

18 A. Right.

19 Q. Do you recall if the people would call you or

20 text you to tell you to come in to pick up meals?

21 A. I don't recall that.

22 Q. Do you recall interacting with Mr. Schwartz at

23 that time?

24 A. No.

25 Q. Do you recall if there was a Late Night manager

47

1 Night at the time?

2 MR. POLLACK: Objection.

3 A. I don't recall.

4 Q. When I say "Late Night," I just want to be

5 clear that we are both talking about the same thing.

6 I am talking about a company called Late Night Express

7 Courier Services, Inc.

8 A. Yes.

9 Q. So when I say "Late Night," that is the company

10 I am referring to.

11 A. Yes.

12 Q. Do you understand that?

13 A. Yes.

14 Q. Do you understand that Late Night had a

15 relationship with a company call The Fresh Diet?

16 MR. POLLACK: Objection.

17 A. Did I understand at the time?

18 Q. At the time, yes.

19 A. No.

20 Q. Were you delivering Fresh Diet meals at that

21 time?

22 MR. POLLACK: Objection.

23 A. I don't know what we called it at that time.

24 Q. At that time when you first began delivering

25 meals, can you describe what the meal packages you

49

1 were delivering looked like?  
 2 A. I don't remember.  
 3 Q. Were they in bags?  
 4 A. Yes.  
 5 Q. Did the bags say anything on them?  
 6 A. I don't know. No.  
 7 Q. Were you given an ID card at that time?  
 8 A. No.  
 9 Q. Were you ever asked to display anything in your  
 10 vehicle at that time indicating your work?  
 11 A. No.  
 12 Q. When you would deliver the meals to the  
 13 customers, did you ever have to identify yourself to  
 14 customers?  
 15 MR. POLLACK: Objection.  
 16 A. No.  
 17 Q. How did you know which customers to deliver  
 18 meals to at that time?  
 19 A. I had a list.  
 20 Q. Who would give you that list?  
 21 A. It was e-mailed to me, and I would print it  
 22 out.  
 23 Q. It was e-mailed to you at your home?  
 24 MR. POLLACK: Objection.  
 25 A. No.

50

1 White Plains facility?  
 2 MR. POLLACK: Objection.  
 3 A. No.  
 4 Q. No?  
 5 A. No.  
 6 Q. Would you have it with you in your car while  
 7 you were making deliveries?  
 8 A. Yes.  
 9 Q. So you would print out the e-mail and use that  
 10 e-mail to determine who to deliver meals to?  
 11 A. Yes.  
 12 Q. You had the e-mail list with you in your car  
 13 while making deliveries, is that your testimony?  
 14 MR. POLLACK: Objection.  
 15 A. Yes.  
 16 Q. Did you keep the list in your car?  
 17 MR. POLLACK: Objection.  
 18 A. I don't understand.  
 19 Q. You said when you would go to pick up the  
 20 meals, you didn't have the list with you?  
 21 MR. POLLACK: Objection.  
 22 A. That is correct.  
 23 Q. Where was the list at the time that you would  
 24 go into the facility to pick up the meals?  
 25 A. I would print it at the facility.

52

1 Q. Where were you living at the time?  
 2 A. I do not remember.  
 3 Q. Did you have your own computer at the time?  
 4 A. I do not remember that.  
 5 Q. But you remember receiving e-mails from  
 6 someone?  
 7 A. Yes.  
 8 Q. With your schedule?  
 9 MR. POLLACK: Objection.  
 10 A. Not a schedule.  
 11 Q. With a list of deliveries that needed to be  
 12 made?  
 13 MR. POLLACK: Objection.  
 14 A. Yes.  
 15 Q. How frequently would you receive these e-mail  
 16 lists?  
 17 A. Every day.  
 18 Q. So it was a list that was e-mailed to you every  
 19 day for deliveries for that night?  
 20 MR. POLLACK: Objection.  
 21 A. Correct.  
 22 Q. You would print out that e-mail?  
 23 MR. POLLACK: Objection.  
 24 A. Yes.  
 25 Q. You would take it with you when you went to the

51

1 Q. You would print it at the facility. So you  
 2 would look at your e-mail during the day when you  
 3 received it?  
 4 A. I don't remember that.  
 5 Q. So you would go to the facility and you would  
 6 print out the list at the facility, and that is how  
 7 you knew where to deliver meals to?  
 8 A. Yes.  
 9 Q. Do you recall who sent you the e-mails?  
 10 A. No.  
 11 Q. Can you describe the facility in White Plains  
 12 as far as how you were able to print out the e-mail?  
 13 Was there an office at the facility?  
 14 A. I do not remember.  
 15 Q. But there was a printer and a computer at the  
 16 facility?  
 17 A. Yes.  
 18 Q. Do you recall if there were other drivers doing  
 19 deliveries at the same time at that facility when you  
 20 were making deliveries?  
 21 A. Yes.  
 22 Q. I would like to move on, but I just want to  
 23 recap though. So your testimony is that you would  
 24 receive e-mails, you would go to the facility, you  
 25 would print the e-mail list out at the facility, and

53

1 you would use that e-mail list to assist you in making  
2 your meal deliveries at night?

3 MR. POLLACK: Objection.

4 A. Yes.

5 Q. Did you have to make the deliveries that were  
6 on the e-mail?

7 MR. POLLACK: Objection.

8 A. What do you mean by "did I have to"?

9 Q. Was that your job?

10 A. If I wanted to deliver the meals -- the list?  
11 I don't understand.

12 Q. Did you have to use the list in order to do  
13 your job properly?

14 MR. POLLACK: Objection.

15 A. Yes.

16 Q. If you had questions about the list, would you  
17 contact Mr. Schwartz?

18 MR. POLLACK: Objection.

19 A. I don't recall.

20 Q. So it is your testimony that you did not know  
21 whose meals you were delivering?

22 MR. POLLACK: Objection.

23 A. Are we talking about at that time?

24 Q. Yes. In White Plains.

25 A. I knew it wasn't Balance for Life anymore.

54

1 Q. You didn't have any role in preparing meals  
2 though?

3 A. No.

4 Q. When the company from whom you were delivering  
5 meals relocated from White Plains to this building in  
6 New Jersey, were you continuing to serve as a delivery  
7 driver?

8 A. Yes.

9 Q. When they relocated to New Jersey, did you have  
10 any responsibilities other than delivering meals?

11 A. I was distributing the list to other drivers.

12 Q. Now, when you say "the list," what are you  
13 referring to?

14 A. The list of names for clients that were getting  
15 deliveries for the evening.

16 Q. Where did you get the lists from?

17 A. They were being e-mailed to me.

18 Q. Were these similar to the types of lists that  
19 you yourself were receiving for your own deliveries?

20 A. Yes.

21 Q. The difference now being that you were also  
22 receiving e-mails of lists for other drivers as well?

23 A. Correct.

24 Q. You were responsible for handing out those  
25 lists to the other drivers?

56

1 Q. You knew it wasn't Balance for Life.

2 A. I do not remember at the time if I knew the  
3 name of the company that I was delivering for.

4 Q. Did the company that you were delivering for  
5 eventually relocate from the White Plains facility to  
6 another facility?

7 MR. POLLACK: Objection.

8 A. Yes.

9 Q. Do you recall when that happened?

10 A. No.

11 Q. Do you recall what facility they located to  
12 after White Plains?

13 A. I know where.

14 Q. Where was it?

15 A. In New Jersey.

16 Q. What type of facility did they relocate to in  
17 New Jersey?

18 MR. POLLACK: Objection.

19 A. I am not sure how to describe it.

20 Q. Was it a building?

21 A. It was.

22 Q. Were meals prepared at that building?

23 A. Yes.

24 Q. Was it a catering facility?

25 A. No.

55

1 A. Correct.

2 Q. Apart from physically handing out the list to  
3 the other drivers, did you have any role in  
4 supervising the other drivers at that time?

5 MR. POLLACK: Objection.

6 A. No.

7 Q. Is it fair to say that at that time you would  
8 print out the lists and go up to the drivers and say,  
9 "Here is your list"?

10 MR. POLLACK: Objection.

11 A. No.

12 Q. How would you distribute the lists to the other  
13 drivers?

14 A. That would depend on the driver, if they wanted  
15 to take a certain route for the night or not. So I  
16 would print out the routes, and they would pick the  
17 routes they wanted to take.

18 Q. So you would receive lists that were not for  
19 specific drivers, but were for routes?

20 A. Correct.

21 Q. So the lists were by route not by driver?

22 MR. POLLACK: Objection.

23 Q. When you received them?

24 MR. POLLACK: Objection.

25 A. Yes.

57

1 Q. Do you recall how many lists you were  
2 receiving?  
3 A. No.  
4 Q. So you would print out these various lists; is  
5 that correct?  
6 A. Correct.  
7 Q. And drivers would come to the facility?  
8 A. Correct.  
9 Q. Then can you describe how you gave the drivers  
10 these lists?  
11 A. I don't understand the question.  
12 Q. Well, you said that the lists were not by  
13 driver, they were by route?  
14 A. Correct.  
15 Q. You testified the drivers would figure out  
16 which route they were interested in making deliveries  
17 for?  
18 MR. POLLACK: Objection.  
19 A. Correct.  
20 Q. Was that your testimony?  
21 MR. POLLACK: Objection.  
22 A. Yes.  
23 Q. Was there a system that you had for determining  
24 which drivers would receive each list?  
25 MR. POLLACK: Objection.

58

1 A. Not that I recall.  
2 Q. That was not your responsibility?  
3 MR. POLLACK: Objection.  
4 A. Not that I recall.  
5 Q. You were continuing to make deliveries  
6 yourself?  
7 MR. POLLACK: Objection.  
8 A. Yes.  
9 Q. This was at the New Jersey facility?  
10 MR. POLLACK: Objection.  
11 A. Yes.  
12 Q. While you were working out of the New Jersey  
13 facility, did you learn which company you were making  
14 deliveries for?  
15 MR. POLLACK: Objection.  
16 A. Yes.  
17 Q. What company was that?  
18 A. The Fresh Diet.  
19 Q. What was The Fresh Diet?  
20 A. I don't understand the question.  
21 MR. POLLACK: Objection.  
22 Q. How did you learn that you were making  
23 deliveries for Fresh Diet?  
24 A. I don't remember how I learned it.  
25 Q. But you did learn it?

60

1 A. That would depend on the driver.  
2 Q. So it was the driver's preference?  
3 A. Yes.  
4 Q. So if a driver said, "I want to do this route,"  
5 that was his preference?  
6 MR. POLLACK: Objection.  
7 A. If it was available to him.  
8 Q. What would happen if two drivers wanted to  
9 deliver on the same route?  
10 MR. POLLACK: Objection.  
11 A. Only one of them would get it.  
12 Q. Would you pick which one would get it?  
13 MR. POLLACK: Objection.  
14 A. It is first come, first serve.  
15 Q. So other than printing out the lists of routes  
16 and making them known to the drivers, did you have any  
17 other responsibilities at that time?  
18 A. Not that I recall.  
19 Q. Were you responsible for making sure that the  
20 drivers were, in fact, making their deliveries?  
21 MR. POLLACK: Objection.  
22 A. No. I don't recall.  
23 Q. So if a driver was having problems making  
24 deliveries, would he contact you?  
25 MR. POLLACK: Objection.

59

1 A. Yes.  
2 Q. How long was the facility in operation in New  
3 Jersey?  
4 A. I don't remember.  
5 Q. Was it more than a year?  
6 A. I do not remember.  
7 Q. Was there someone in charge of the facility in  
8 New Jersey?  
9 MR. POLLACK: Objection.  
10 A. I do not remember.  
11 Q. As far as yourself, during the time that you  
12 were in New Jersey, were you still reporting to  
13 Mr. Schwartz?  
14 MR. POLLACK: Objection.  
15 A. I don't recall.  
16 Q. Do you recall if you had any issues with making  
17 deliveries or any questions who you would talk to?  
18 A. No.  
19 Q. Did the facility eventually relocate from New  
20 Jersey?  
21 A. Yes.  
22 Q. Do you recall what the next location was?  
23 A. It was another location in New Jersey.  
24 Q. Another location in New Jersey?  
25 A. Yes.

61



1 Q. Do you recall what the other location was?  
 2 A. I think it was a catering or a banquet hall, I  
 3 guess.  
 4 Q. Did it have a name?  
 5 A. I do not remember the name.  
 6 Q. Did your responsibilities change at that time?  
 7 A. Yes.  
 8 Q. How did they change?  
 9 A. In addition to distributing the routes, I was  
 10 also bringing drivers in.  
 11 Q. When you say "bringing drivers in," you mean  
 12 hiring new drivers?  
 13 MR. POLLACK: Objection.  
 14 A. Yes.  
 15 Q. Who gave you that new role?  
 16 A. I do not remember.  
 17 Q. Do you recall that someone asked you to take on  
 18 this new role?  
 19 A. Yes.  
 20 Q. Were you continuing to make deliveries  
 21 yourself?  
 22 A. Yes.  
 23 Q. So you were asked to, in addition to  
 24 distributing the list and making deliveries, bring in  
 25 new drivers?

62

1 Q. Was there a written application that people who  
 2 were interested in being delivery drivers for the  
 3 company had to fill out?  
 4 A. Not that I remember at the time.  
 5 Q. So if someone was interested in becoming a  
 6 delivery driver, you would meet with them; is that  
 7 correct?  
 8 A. Yes.  
 9 Q. And you would meet with them?  
 10 MR. POLLACK: Objection.  
 11 A. Yes.  
 12 Q. And you would decide whether or not to hire  
 13 them?  
 14 MR. POLLACK: Objection.  
 15 A. Yes.  
 16 Q. If someone came and asked for a position as a  
 17 delivery driver and you felt he was not a suitable  
 18 candidate, you could choose not to use him; is that  
 19 correct?  
 20 MR. POLLACK: Objection.  
 21 A. Yes.  
 22 Q. Do you recall rejecting or not using people who  
 23 would ask for jobs?  
 24 A. Not that I recall.  
 25 Q. But you didn't hire everyone who asked for a

64

1 MR. POLLACK: Objection.  
 2 A. Yes.  
 3 Q. Any other increased responsibilities at that  
 4 time?  
 5 A. Not that I recall.  
 6 Q. Can you describe the process whereby which you  
 7 brought in new drivers?  
 8 A. Word of mouth from other drivers that were  
 9 there. Craigslist.  
 10 Q. Did you have to put the ads on Craigslist?  
 11 A. I do not remember.  
 12 Q. Do you recall asking drivers if they knew of  
 13 other people who might be interested in driving and  
 14 delivering for the company?  
 15 A. I did ask drivers, yes.  
 16 Q. Would you receive telephone calls from people  
 17 who were interested in working as delivery drivers?  
 18 A. Yes.  
 19 Q. Did some people just show up in person and ask  
 20 for a job?  
 21 A. Yes.  
 22 Q. Was it your practice at that time to meet with  
 23 people who were interested in working as delivery  
 24 drivers for the company?  
 25 A. Yes.

63

1 job?  
 2 A. No.  
 3 Q. So some people you hired and some people you  
 4 didn't hire; is that correct?  
 5 MR. POLLACK: Objection.  
 6 A. Yes.  
 7 Q. Do you recall what the initial interview  
 8 process consisted of when you would meet people  
 9 looking for jobs?  
 10 A. No.  
 11 Q. Do you recall what you discussed with them when  
 12 determining whether to hire them?  
 13 A. At the time, no.  
 14 Q. Were you given criteria by anyone else to use  
 15 in determining who to hire?  
 16 A. No.  
 17 Q. What were the kinds of facts or circumstances  
 18 that would cause you not to hire someone?  
 19 MR. POLLACK: Objection.  
 20 Q. Who wanted to work as a delivery driver?  
 21 MR. POLLACK: Objection.  
 22 A. The condition of their car maybe.  
 23 Q. They had to have their own car?  
 24 A. Yes.  
 25 Q. And it had to be in good condition?

65

1 A. In working condition.  
 2 Q. Did you look at their cars when they came in to  
 3 ask for jobs?  
 4 A. Yes.  
 5 Q. Did they have to have a good driving record?  
 6 A. I do not remember that at the time.  
 7 Q. Do you recall having to run any type of  
 8 background checks on applications for positions as  
 9 delivery drivers?  
 10 MR. POLLACK: Objection.  
 11 A. No.  
 12 Q. Do you recall at the time that you were  
 13 bringing in new drivers, when you first began bringing  
 14 in new drivers, how those people were compensated?  
 15 A. No.  
 16 Q. Do you recall describing to them how they would  
 17 be paid?  
 18 A. Yes.  
 19 Q. What do you recall about those conversations  
 20 where you described to them how they would be paid?  
 21 A. I don't recall the conversations, but I know we  
 22 had the discussion about how they were going to be  
 23 compensated.  
 24 Q. Do you recall how they were going to be  
 25 compensated?

66

1 A. Yes.  
 2 Q. Were you also responsible for discontinuing a  
 3 driver's services if you felt that they were not  
 4 adequate?  
 5 MR. POLLACK: Objection.  
 6 Q. At that time?  
 7 A. Yes.  
 8 Q. So if you decided to work with someone or if  
 9 you decided to use someone, and then it turned out  
 10 that they were not doing a very good job, you could  
 11 ask them to stop making deliveries for the company?  
 12 MR. POLLACK: Objection.  
 13 A. Yes.  
 14 Q. Do you recall ever doing that?  
 15 A. No.  
 16 Q. You yourself were continuing to make your own  
 17 deliveries as well?  
 18 MR. POLLACK: Objection.  
 19 A. Yes.  
 20 Q. This was at the second facility in New Jersey  
 21 we are talking about?  
 22 A. Yes.  
 23 Q. Did The Fresh Diet and/or Late Night ever  
 24 relocate from that facility?  
 25 MR. POLLACK: Objection.

68

1 A. Eventually it was told to me, and then I  
 2 expressed that to them, yes.  
 3 Q. Who told you how drivers were to be  
 4 compensated?  
 5 A. I don't remember.  
 6 Q. Would it have been Mr. Schwartz?  
 7 A. I don't remember.  
 8 Q. But somebody did?  
 9 A. Yes.  
 10 Q. You did not determine how drivers were to be  
 11 compensated at the time?  
 12 MR. POLLACK: Objection.  
 13 A. No.  
 14 Q. That was not your decision to make?  
 15 MR. POLLACK: Objection.  
 16 A. No.  
 17 Q. Did drivers have to fill out any paperwork at  
 18 that time when they applied for positions?  
 19 A. Not that I remember.  
 20 Q. So you remember its being a verbal face to face  
 21 interview process?  
 22 A. Yes.  
 23 Q. Then you would decide whether you would use  
 24 them or not?  
 25 MR. POLLACK: Objection.

67

1 A. Yes.  
 2 Q. Do you recall the next facility they went to?  
 3 A. Yes.  
 4 Q. Where was that?  
 5 A. It was in Connecticut.  
 6 Q. Do you recall where in Connecticut it was?  
 7 A. No.  
 8 Q. Do you recall where you were living at the  
 9 time?  
 10 A. Manhattan.  
 11 Q. Were you driving to Connecticut for work?  
 12 A. Yes.  
 13 Q. Do you recall when they moved to Connecticut?  
 14 A. No.  
 15 I am sorry. Can we take a recess for a moment?  
 16 MR. ANDREWS: We will go off the record for a  
 17 few minutes.  
 18 (Whereupon, from 11:34 a.m. to 11:42 a.m. a  
 19 recess was taken, and the question and answer were  
 20 read back.)  
 21 MR. ANDREWS: Back on the record.  
 22 BY MR. ANDREWS:  
 23 Q. Mr. Hussain, without recalling the specific  
 24 date, do you recall when you first began working at  
 25 the Connecticut facility?

69

1 A. No.

2 Q. I am not asking for the date. Do you recall  
3 actually going to the Connecticut facility for the  
4 first time?

5 A. Yes.

6 Q. Was there someone in charge of the Connecticut  
7 facility?

8 A. Not that I remember.

9 Q. Now, what was at the Connecticut facility?

10 A. There was a kitchen, an office, some storage  
11 rooms, a parking lot, and the loading dock.

12 Q. Did you yourself have an office at that  
13 facility?

14 A. No.

15 Q. Do you know who used that office at that  
16 facility?

17 A. I think that the people that own the facility  
18 had their offices there.

19 Q. Do you recall who any of those people were?

20 A. No.

21 Q. Did they include Mr. Schwartz?

22 MR. POLLACK: Objection.

23 A. No.

24 Q. Do you recall if Mr. Zalmi Duchman used that  
25 office?

70

1 A. I don't understand.

2 Q. If complaints had been reported to you that a  
3 particular driver was having problems making  
4 deliveries, would you have any role in dealing with  
5 that issue?

6 MR. POLLACK: Objection.

7 A. I do not remember if any complaints were being  
8 issued to me at that time.

9 Q. Do you recall ever having to tell a driver that  
10 he was not making his deliveries properly?

11 MR. POLLACK: Objection.

12 A. No.

13 Q. At that time?

14 A. No.

15 Q. Do you recall ever having to discontinue using  
16 any drivers at that time?

17 A. No.

18 Q. Do you recall people at either Late Night or  
19 Fresh Diet asking you how you believed a particular  
20 driver were doing?

21 MR. POLLACK: Objection.

22 A. I don't recall a conversation of that nature.

23 Q. Approximately how many hours a week were you  
24 working at that time in Connecticut doing these three  
25 different roles you described for me?

72

1 A. No.

2 Q. Do you recall the names of anyone who might  
3 have used that office?

4 A. There was a computer and a printer there.

5 Q. But you do not recall who used the office?

6 A. I think Yosef did.

7 Q. When you arrived at the Connecticut facility,  
8 what were your responsibilities at the time you  
9 arrived at the Connecticut facility?

10 A. The same responsibilities that I had in New  
11 Jersey.

12 Q. So you were making deliveries?

13 A. Yes.

14 Q. You were distributing lists to drivers?

15 A. Yes.

16 Q. You were recruiting or hiring new drivers?

17 A. Correct.

18 Q. Were you also evaluating or supervising the  
19 drivers at that time?

20 MR. POLLACK: Objection.

21 A. No.

22 Q. So if a driver was not doing his job well, was  
23 that not within your area of responsibility to deal  
24 with?

25 MR. POLLACK: Objection.

71

1 A. I don't remember how many hours specifically.

2 Q. Do you recall roughly the allocation of time?  
3 What I mean by that, is how much time did you spend  
4 yourself delivering meals, how much time did you spend  
5 handing out lists, and how much time did you spend  
6 hiring new drivers?

7 MR. POLLACK: Objection.

8 A. No.

9 Q. Did you have a title or a position while you  
10 were at the Connecticut facility?

11 A. No.

12 Q. Do you recall what time of day you would  
13 generally have to get to the Connecticut facility to  
14 do your work?

15 MR. POLLACK: Objection.

16 A. No.

17 Q. Was it in the afternoon?

18 A. Yes.

19 Q. It was not at 10:00 in the morning?

20 MR. POLLACK: Objection.

21 A. No.

22 Q. How would you know when you had to get to the  
23 Connecticut facility?

24 MR. POLLACK: Objection.

25 A. It was just from past practices that we knew

73

1 that the food was ready at a certain time, and that is  
2 the time that everybody would go in.

3 Q. So you did not receive a schedule?

4 A. No.

5 Q. At that time?

6 A. No.

7 Q. During the time you were at Connecticut, do you  
8 recall how you were compensated?

9 A. No.

10 Q. You don't recall if you were being paid an  
11 hourly rate for the work you were doing handing out  
12 the lists?

13 MR. POLLACK: Objection.

14 A. No.

15 Q. Do you recall if you were being paid hourly for  
16 the time you spent hiring drivers?

17 MR. POLLACK: Objection.

18 A. No.

19 Q. Do you recall that you were, in fact, paid for  
20 hiring drivers?

21 MR. POLLACK: Objection.

22 A. No.

23 Q. Do you recall if you were an employee of Late  
24 Night at that time in Connecticut?

25 MR. POLLACK: Objection.

74

1 Q. How long were Late Night or The Fresh Diet  
2 operating out of the Connecticut facility?

3 MR. POLLACK: Objection.

4 A. I don't recall.

5 Q. Was it more than a year or less than a year?

6 A. It would not be more than a year.

7 Q. So likely it was less than a year?

8 A. Yes.

9 Q. Do you recall where the next facility was?

10 A. Yes.

11 Q. Where was that?

12 A. In Brooklyn.

13 Q. Do you recall the street in Brooklyn?

14 A. Siegel Street.

15 Q. Do you recall approximately when the facility  
16 moved to the Siegel Street location?

17 A. No.

18 Q. Do you recall why the operations were relocated  
19 to Siegel Street?

20 A. No.

21 Q. I would like to ask you about the Siegel Street  
22 location. What was physically at Siegel Street as far  
23 as the facility?

24 A. Warehouse, offices, kitchen, fridges, freezers.

25 Q. Was there an on-site manager of the Siegel

76

1 A. No.

2 Q. You don't recall?

3 A. No.

4 Q. That is your testimony, you don't recall or,  
5 no, you were not an employee?

6 A. No. I was not an employee.

7 Q. No, you were not an employee of Late Night?

8 A. Yes.

9 Q. What was your status with Late Night at that  
10 time in Connecticut?

11 MR. POLLACK: Objection. Calls for a legal  
12 conclusion.

13 A. I was doing deliveries. So I was a delivery  
14 driver.

15 MR. POLLACK: Objection.

16 Q. But you did not consider yourself to be an  
17 employee?

18 A. No.

19 MR. POLLACK: Objection.

20 Q. Why did you not consider yourself to be an  
21 employee?

22 MR. POLLACK: Objection.

23 A. I didn't have a title.

24 Q. Any other reason?

25 A. No.

75

1 Street facility in Brooklyn?

2 MR. POLLACK: Objection.

3 A. I am not sure I understand the question. When  
4 you say "manager," what do you mean by "manager"?

5 Q. Was someone in charge of operations at Siegel  
6 Street?

7 MR. POLLACK: Objection.

8 A. Not to my knowledge.

9 Q. When you first arrived at Siegel Street were  
10 your duties the same as they had been at Connecticut?

11 A. When I first arrived, yes.

12 Q. So those duties, just to be clear, were three.  
13 One was to make deliveries yourself?

14 A. Yes.

15 Q. The second was to hand out delivery lists for  
16 routes to other drivers?

17 A. Correct.

18 Q. And the third was to recruit new drivers?

19 A. Yes.

20 Q. Those were the only responsibilities that you  
21 had at the time you first arrived at Siegel Street?

22 A. Yes.

23 Q. When you first arrived at Siegel Street, did  
24 you yourself report to any one person or persons in  
25 particular?

77

1 A. At the Siegel Street location?

2 Q. When you first got to Siegel Street, yes.

3 A. Not that I recall. I don't remember who I

4 reported to and if I did.

5 Q. You would arrive at the Siegel Street location

6 on the days that you worked in the afternoon?

7 A. Yes.

8 Q. You would know when to arrive based on past

9 practices?

10 A. Correct.

11 Q. On those days that you worked, when you arrived

12 at the Siegel Street location, how did your work day

13 unfold when you arrived? What was the first thing you

14 did when you arrived at the Siegel Street location?

15 MR. POLLACK: Objection.

16 A. I do not remember. It was probably printing

17 the routes.

18 Q. You would have to print out the routes and

19 distribute them before you would make deliveries

20 yourself?

21 MR. POLLACK: Objection.

22 A. Yes.

23 Q. So making deliveries would be the last thing

24 you would do on the days that you would work?

25 A. Yes.

78

1 relocate to another facility after Siegel Street?

2 A. Yes.

3 Q. How long were they at Siegel Street?

4 A. I don't know the exact time.

5 Q. Was it more than a year or less than a year?

6 A. More.

7 Q. More than a year. During the time that you

8 were working out of the Siegel Street location, did

9 there ever come a point in time where your

10 responsibilities changed from the three items I just

11 described?

12 A. Yes.

13 Q. Do you recall what that change was?

14 A. I became responsible for liaisoning with

15 customer service in regards to missed deliveries. I

16 don't recall what else right now.

17 Q. What did that entail, your liaisoning with

18 customer service regarding missed deliveries?

19 A. Phone calls, e-mails.

20 Q. So someone or more than one person would

21 contact you regarding a complaint about a missed

22 delivery?

23 A. Yes.

24 Q. Do you recall who were the people who would be

25 contacting you about those issues?

80

1 Q. Did you have to return to Siegel Street after

2 completing your deliveries for the day or night?

3 MR. POLLACK: Objection.

4 A. Not to my recollection.

5 Q. At that time?

6 A. Yes.

7 Q. When you first began at Siegel Street, where

8 were you yourself delivering to?

9 A. New York City.

10 Q. You had a route in New York City?

11 A. Yes.

12 Q. Was it a specific route?

13 A. Not that I recall.

14 Q. Did it have a name?

15 A. I don't recall.

16 Q. Do you recall what part of New York City the

17 route was in?

18 A. No.

19 Q. Do you recall how many deliveries you were

20 making approximately each night?

21 A. No.

22 Q. How long were operations conducted at Siegel

23 Street?

24 A. I don't understand the question.

25 Q. Did The Fresh Diet or Late Night eventually

79

1 A. Initially?

2 Q. Yes.

3 A. Yosef Schwartz, Carlo Ritchie, Camillo Tobon.

4 Q. Anyone else?

5 A. Zalmi Duchman.

6 Q. Anything else?

7 A. Those are the ones I remember.

8 Q. And you recall that from time to time you would

9 get a call or an e-mail from these people regarding a

10 missed delivery?

11 A. Correct.

12 Q. Do you recall in general what they would ask

13 you to do about that?

14 A. Investigate and find out what happened.

15 Q. Did you do that on those occasions?

16 A. Yes.

17 Q. How did you do that?

18 A. By asking the driver if they recall making the

19 delivery or not or where they made the delivery to.

20 Specifics of the delivery.

21 Q. Would you have to report that information back

22 to whoever asked you?

23 A. Yes.

24 Q. Were you yourself responsible at that time for

25 cautioning or reprimanding a driver if they missed a

81

1 delivery?

2 MR. POLLACK: Objection.

3 A. I don't understand the question. We didn't  
4 reprimand or caution anybody.

5 Q. What would have happened if a driver missed a  
6 delivery?

7 A. Then they would get a monetary penalty.

8 Q. Who would make the decision as to whether or  
9 not a driver had missed a delivery?

10 A. Who would make a decision as to whether a  
11 driver missed a delivery?

12 Q. Who would decide whether a monetary penalty  
13 should be imposed?

14 A. I did.

15 Q. So you would investigate a complaint by  
16 speaking with the driver who was responsible for the  
17 specific delivery?

18 A. Correct.

19 Q. If you determined that he had, in fact, missed  
20 a delivery, you would impose a monetary penalty?

21 A. Correct.

22 Q. That was your decision to make?

23 A. Yes.

24 Q. Do you recall who granted you the authority to  
25 make that decision?

82

1 A. Yes.

2 Q. Did you give out these contracts during the  
3 recruitment process of new drivers?

4 A. Yes.

5 Q. Did you explain to new drivers what this was  
6 that they were being asked to sign?

7 A. Yes.

8 Q. What do you recall about what you explained  
9 this document was?

10 A. The document was, I just explained that this  
11 was a contract that listed their duties as a driver,  
12 as a contractor; and what the penalties were for  
13 missed deliveries. Other than that, I don't remember  
14 what else I specified.

15 Q. Back to my question about where these contracts  
16 or documents came from, my question is not whether  
17 they came from Florida or New York. My question is  
18 where did you obtain the contracts that you would give  
19 to the drivers?

20 A. Someone e-mailed them to me. I do not remember  
21 who that was.

22 Q. But they were e-mailed already prepared to be  
23 signed by the drivers?

24 A. Yes.

25 Q. So you would negotiate over the terms of these

84

1 A. No.

2 Q. Was this monetary penalty set out in any  
3 written document that the drivers had received?

4 A. As far as I remember, yes.

5 Q. What was that written document that set out  
6 what the monetary penalty would be?

7 A. I do not remember. I think it was a contract  
8 of some sort.

9 Q. Did you draft those contracts yourself?

10 A. No.

11 Q. Did you participate in drafting them?

12 A. No.

13 Q. Did you ever change the words in any of those  
14 contracts?

15 A. No.

16 Q. Do you recall where these contracts came from?

17 A. No. When you say where they came from, are you  
18 asking me if they came from New York or from Florida?

19 Q. No. That is not what I am asking. Were these  
20 contracts given to drivers?

21 A. Yes.

22 Q. Did the drivers have to sign these contracts?

23 A. Yes.

24 Q. Were you the person who actually gave them the  
25 contracts to read and sign?

83

1 contracts with the drivers?

2 MR. POLLACK: Objection.

3 A. Negotiating?

4 Q. If a driver didn't want to sign the contract or  
5 disagreed with something in the contract, didn't you  
6 have the right to modify the contract in any way?

7 MR. POLLACK: Objection.

8 A. No.

9 Q. Do you recall reading the contracts yourself?

10 A. No.

11 Q. Did you read the contracts yourself?

12 A. I do not remember if I did or not.

13 Q. So the process was, and we are talking about  
14 Siegel Street now, if people were looking for a job,  
15 they would come in to meet with you?

16 A. Yes.

17 Q. You would tell them a little bit about what  
18 they needed to do?

19 A. Yes.

20 Q. And you would hand them this document, and you  
21 would tell them that they needed to sign it?

22 MR. POLLACK: Objection.

23 A. No.

24 Q. What was incorrect about what I just said?

25 A. If I felt that they were right for the job and

85

1 they would accept the job, then they would sign it.  
 2 It wasn't something that they had to sign. It was  
 3 something that they signed after they accepted the  
 4 job.  
 5 Q. But they had to sign it before they could begin  
 6 working for the company?  
 7 A. Yes.  
 8 Q. So the process was someone typically would come  
 9 in to meet with you about working as a delivery  
 10 driver. You would meet with the person and you would  
 11 determine whether they were a suitable candidate. You  
 12 would tell them that the company was interested in  
 13 using them. And if they expressed an interest in  
 14 working for the company, you would explain to them  
 15 that they needed to sign this contract; is that  
 16 correct?  
 17 MR. POLLACK: Objection.  
 18 A. Yes.  
 19 Q. Is there anything that I just described that  
 20 you would disagree with about the process?  
 21 A. I don't know. Can you repeat it?  
 22 (Whereupon, the question was read.)  
 23 Q. Did you have the opportunity to hear that  
 24 again?  
 25 A. Yes.

86

1 Q. What was it?  
 2 A. \$25.  
 3 Q. \$25 for each missed delivery; is that correct?  
 4 A. Yes.  
 5 Q. So if a complaint was made by a customer of The  
 6 Fresh Diet that he or she did not get his or her meal,  
 7 is it your understanding that that complaint would  
 8 have been directed to Fresh Diet's customer service  
 9 department?  
 10 A. Yes.  
 11 Q. Then the customer service department would  
 12 contact you?  
 13 A. Yes.  
 14 Q. The customer service department would typically  
 15 tell you, "Customer A says he didn't get his meal  
 16 yesterday"?  
 17 A. Yes.  
 18 Q. You would respond by figuring out which driver  
 19 was supposed to have made that delivery?  
 20 A. Correct.  
 21 Q. How would you do that?  
 22 A. How would I figure out who did the deliveries?  
 23 Q. How would you figure out which driver was  
 24 supposed to have made that delivery that was missed?  
 25 A. Because I would know which driver was doing

88

1 Q. So my question is: is there anything that I  
 2 described about that process of recruiting a new  
 3 driver that you disagree with?  
 4 MR. POLLACK: Objection.  
 5 A. I don't think so.  
 6 Q. When you actually gave them the contract to  
 7 sign, did you explain that this was something that the  
 8 company wanted them to sign?  
 9 MR. POLLACK: Objection.  
 10 A. Yes.  
 11 Q. Could drivers work for the company, if they  
 12 didn't sign the contract?  
 13 MR. POLLACK: Objection.  
 14 A. No.  
 15 Q. If a driver read the contract and said, "I am  
 16 not signing this," they couldn't work as a delivery  
 17 driver?  
 18 MR. POLLACK: Objection.  
 19 A. Yes.  
 20 Q. This document or contract set out a financial  
 21 penalty for a missed delivery?  
 22 MR. POLLACK: Objection.  
 23 A. Yes.  
 24 Q. Do you recall what the financial penalty was?  
 25 A. Yes.

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1 which deliveries for the previous night.  
 2 Q. Was that by looking at some type of document?  
 3 A. Yes.  
 4 Q. What document or documents would you look at to  
 5 determine which driver was supposed to have made that  
 6 delivery?  
 7 A. The manifest that the driver used for the  
 8 night.  
 9 Q. Now, this manifest that the driver used for the  
 10 night, can you describe what this type of document  
 11 was?  
 12 A. It is a document that contains the names and  
 13 addresses of the clients and the instructions for  
 14 delivery.  
 15 Q. Who would prepare the manifests at Siegel  
 16 Street?  
 17 A. At that time they were being e-mailed to me,  
 18 and eventually I started preparing them.  
 19 Q. Initially at Siegel Street you were not  
 20 preparing the manifests?  
 21 A. No.  
 22 Q. Do you recall who was preparing the manifests?  
 23 A. Camillo Tobon.  
 24 Q. Who was Camillo Tobon?  
 25 A. I don't know his position in the company.

89

1 Q. Did he work at Siegel Street?  
 2 A. No.  
 3 Q. Did he work in Florida?  
 4 A. Yes.  
 5 Q. So he would e-mail you the manifests?  
 6 A. Yes.  
 7 Q. And you would have to distribute those  
 8 manifests to the drivers?  
 9 A. Correct.  
 10 Q. At the beginning of their shifts?  
 11 A. Yes.  
 12 Q. That is what drivers were expected to use to  
 13 make deliveries?  
 14 A. Yes.  
 15 MR. POLLACK: Objection.  
 16 Q. It was their responsibility to make the  
 17 deliveries that they had been assigned to make?  
 18 MR. POLLACK: Objection.  
 19 A. Yes.  
 20 Q. If they didn't make those deliveries and  
 21 someone complained and you investigated and you  
 22 determined that, indeed, they had not made a delivery,  
 23 you would impose the financial penalty on the driver?  
 24 A. Yes.  
 25 Q. Were you the only person at Siegel Street

90

1 a penalty was not warranted even though a complaint  
 2 had been made by a customer?  
 3 A. If the bag was left with the concierge of a  
 4 building, that would become the building's  
 5 responsibility, and it would be no fault on the  
 6 driver. If a driver could not gain entry into the  
 7 building and had to leave the bag somewhere and it was  
 8 taken.  
 9 Q. That would be another situation where it would  
 10 not be the driver's responsibility?  
 11 A. Correct.  
 12 Q. You would not impose a financial penalty?  
 13 A. Correct.  
 14 Q. But if a driver simply delivered the food to  
 15 the wrong address, that would be his responsibility?  
 16 A. Yes.  
 17 Q. If he lost the food, that would be his  
 18 responsibility?  
 19 A. Yes.  
 20 Q. If he simply just didn't make the delivery,  
 21 that would be his responsibility?  
 22 A. Yes.  
 23 Q. If he ran out of time and didn't finish making  
 24 his deliveries, that would be his responsibility?  
 25 MR. POLLACK: Objection.

92

1 responsible for investigating whether a delivery was  
 2 missed?  
 3 A. Yes.  
 4 Q. When you approached a driver about a missed  
 5 delivery, do you recall how you would initiate that  
 6 discussion?  
 7 A. No.  
 8 Q. Would you ask the driver whether he recalled  
 9 making a delivery to that location?  
 10 A. Probably.  
 11 Q. Would you wait to hear what the driver said?  
 12 A. Yes.  
 13 Q. Then you would evaluate what happened?  
 14 A. Yes.  
 15 Q. You would decide whether the penalty was  
 16 warranted?  
 17 A. Yes.  
 18 Q. Were there times when you determined that a  
 19 penalty was not warranted?  
 20 A. Yes.  
 21 Q. There were times when you decided that a  
 22 penalty was warranted?  
 23 A. Yes.  
 24 Q. I would like to just focus on that. What would  
 25 be the circumstances under which you would decide that

91

1 A. That would depend on the situation.  
 2 Q. I want to focus now at the time that you first  
 3 acquired this new additional responsibility. So this  
 4 was a new additional responsibility that you acquired  
 5 at Siegel Street that you did not have previously?  
 6 A. Which one?  
 7 Q. Investigating customer complaints, speaking to  
 8 drivers about customer complaints, and determining  
 9 whether or not a financial penalty was warranted?  
 10 A. As far as I recall, yes.  
 11 Q. At the time that you acquired this new  
 12 responsibility, did the drivers while they were on the  
 13 road making the deliveries have to be in contact with  
 14 you in some way?  
 15 A. No.  
 16 Q. So at the time that you first acquired this new  
 17 responsibility, you were not in actual realtime  
 18 contact with drivers while they were on the road?  
 19 A. Yes, I was.  
 20 Q. You were?  
 21 A. Yes.  
 22 Q. Could you describe how that worked? How that  
 23 arrangement worked?  
 24 A. If they had a problem making a delivery, then  
 25 they would call me and tell me.

93



1 Q. Did you have any responsibility for trying to  
2 resolve that difficulty that they were having in  
3 making a delivery?

4 A. If I could, I would.

5 Q. How would you try to do that?

6 A. It depends on the situation.

7 Q. Would you possibly try to call a customer and  
8 let them know that someone was trying to deliver food  
9 to them?

10 A. Yes.

11 Q. Was that one of your responsibilities?

12 A. Yes.

13 Q. Would you try to obtain more information, if  
14 any information was available, about specific delivery  
15 instructions?

16 A. Yes.

17 Q. You did this in order to assist the drivers to  
18 make their deliveries?

19 A. Yes.

20 Q. Is it fair to say that part of your  
21 responsibilities were to assist the drivers in making  
22 their deliveries while they were out on the road by  
23 doing the things that you just testified about?

24 MR. POLLACK: Objection.

25 A. If they needed assistance?

94

1 Q. I am not asking for the date. But do you  
2 recall that change happening?

3 A. Do I recall the change happening?

4 Q. Yes.

5 A. Yes.

6 Q. You recall that at some point drivers were  
7 required to return to the facility at the end of their  
8 shift?

9 A. Yes.

10 Q. Do you recall why the policy was changed?

11 MR. POLLACK: Objection.

12 A. The policy was changed for inventory purposes,  
13 to my knowledge.

14 Q. Could you describe what you mean by "inventory  
15 purposes"?

16 A. They would pick up empty bags at night when  
17 they made the deliveries. So we would have those bags  
18 come back to the facility to be reused for the next  
19 day.

20 Q. Before the change happened, you were not  
21 getting those bags back at the end of the driver's  
22 shifts; is that correct?

23 A. Yes.

24 Q. Was there a shortage of bags?

25 A. I believe so.

96

1 Q. Yes. That is what I mean. If they contacted  
2 you and said, "I can't get to this house" or "I don't  
3 know what to do at this location," part of your  
4 responsibilities were to do what you could to try to  
5 help the diver make the deliveries?

6 A. Yes.

7 Q. Did the drivers have to report to you as they  
8 were making deliveries?

9 A. No.

10 Q. So if a driver was not encountering any  
11 problems and his or her deliveries were going smoothly  
12 that night, they did not have to call in to you at  
13 that time to tell you what they were doing?

14 A. No.

15 Q. Did they have to call in at the end of their  
16 deliveries?

17 A. No.

18 Q. Did they have to return to the Siegel Street  
19 facility after they finished making their deliveries?

20 A. Yes.

21 Q. Was that true when the Siegel Street facility  
22 first began operating?

23 A. No.

24 Q. So it was a change that happened at some point?

25 A. Yes.

95

1 Q. So that is why Late Night wanted the bags back  
2 at the end of the driver's shifts; is that correct?

3 A. Yes.

4 Q. You needed the bags?

5 MR. POLLACK: Objection.

6 A. Yes.

7 Q. Once the change was made, did drivers have to  
8 contact you at the end of their deliveries to tell you  
9 that they were on the way back to the facility?

10 A. No.

11 Q. Did drivers simply return to the facility with  
12 the empty bags?

13 A. Yes.

14 Q. When they started returning back to the  
15 facility at the end of their deliveries with the empty  
16 bags, what do you recall their having to do?

17 A. I don't recall what they were doing. I wasn't  
18 always there at that time.

19 Q. During this time were you still making  
20 deliveries yourself?

21 A. Yes.

22 Q. Were you at a reduced level as far as the  
23 number of deliveries you were having to make?

24 A. I think so.

25 Q. This was because of your other

97

1 responsibilities?

2 A. Yes.

3 Q. Now, you don't recall what the drivers had to  
4 do when they would return to the facility after  
5 finishing their deliveries?

6 A. No. They would come back and return the bags.

7 Q. Do you recall if they had to do anything else  
8 other than return the bags?

9 A. They were emptying out the ice packs, and then  
10 returning the bags. I do not remember exactly where  
11 they were being placed.

12 Q. At this time when the change was made, did the  
13 drivers have to report to you how their night had gone  
14 as far as their deliveries?

15 A. No.

16 Q. So it is your testimony that at this time,  
17 absent the complaint from customer service, the  
18 drivers were not reporting to you what had happened  
19 during the night with their deliveries?

20 A. If nothing went wrong, no.

21 Q. You didn't have to review any paperwork at the  
22 end of their deliveries?

23 A. They would bring the manifests back with the  
24 amount of bags that they had picked up from each  
25 client.

98

1 A. Yes.

2 Q. Was there any reason why you would want to keep  
3 them?

4 A. For inventory purposes, to see if the client  
5 wasn't returning the bags for a long period of time.

6 Q. But in some instances you would also throw them  
7 out?

8 A. At the end of each week.

9 Q. At the end of each week you would throw out the  
10 manifests?

11 A. Yes.

12 Q. There was no reason to keep the manifests  
13 longer than a week?

14 MR. POLLACK: Objection.

15 A. Correct.

16 Q. Was it your practice to review the completed  
17 manifests that were returned to you?

18 A. No.

19 Q. So if a driver came back and said, "Mr. Hussain  
20 or Syed, here is my manifest," and you would take it  
21 from the driver. If there was no complaint from  
22 customer service, you would not look at the manifest;  
23 and after the end of the week, you would throw the  
24 manifest out; is that correct?

25 MR. POLLACK: Objection.

100

1 Q. That would be indicated on the manifest?

2 A. Correct.

3 Q. They had to fill that information out on the  
4 manifest?

5 MR. POLLACK: Objection.

6 A. Yes.

7 Q. That is what they were supposed to do?

8 MR. POLLACK: Objection.

9 A. Yes.

10 Q. Had you instructed them that this is what they  
11 were supposed to do?

12 MR. POLLACK: Objection.

13 Q. Would they return their manifests to you?

14 A. If I was there.

15 Q. If you were there?

16 A. Yes.

17 Q. If you were there, they would hand your  
18 manifests to you?

19 A. Yes.

20 Q. What did you do with the manifests when they  
21 were handed back to you?

22 A. Nothing really.

23 Q. Did you keep them?

24 A. Yes.

25 Q. Did you ever throw any of them out?

99

1 Q. Is that correct?

2 A. I would look at it, like I said, for inventory  
3 purposes to see if a client had returned a bag or not.

4 Q. Would you do that for every manifest?

5 A. Not every manifest.

6 Q. If a client wasn't returning bags back, what  
7 would happen?

8 A. I would let customer service know to let the  
9 clients know to return our bags.

10 Q. So we are now at Siegel Street once this change  
11 has been made, where the drivers are coming back at  
12 the end of their shifts. Did the company eventually  
13 move out of Siegel Street?

14 A. Yes.

15 Q. Did the company actually move out of Siegel  
16 Street?

17 A. Yes.

18 Q. Do you recall when they moved to another  
19 location?

20 MR. POLLACK: Objection.

21 A. Yes.

22 Q. Can you recall when that was, approximately?

23 A. I would say 2011.

24 Q. Do you recall what facility they moved to?

25 A. Yes.

101

1 Q. What was that?  
 2 A. Another facility in Brooklyn.  
 3 Q. Was that on Baltic Street?  
 4 A. Yes.  
 5 Q. What was the address?  
 6 A. 588 Baltic.  
 7 Q. In 2011, when Late Night or The Fresh Diet  
 8 moved to 588 Baltic Street, can you just describe what  
 9 was at 588 Baltic Street?  
 10 A. Loading dock, kitchen, freezers, fridges,  
 11 offices.  
 12 Q. Do you recall why the company moved from Siegel  
 13 Street to Baltic Street?  
 14 MR. POLLACK: Objection.  
 15 A. No.  
 16 Q. Was Baltic Street a larger facility than Siegel  
 17 Street?  
 18 A. Yes.  
 19 Q. It is my understanding that when you first were  
 20 relocated to Baltic Street, your responsibilities at  
 21 that time consisted of continuing to make deliveries  
 22 yourself?  
 23 A. No.  
 24 Q. By this time you had stopped making deliveries  
 25 yourself?

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1 MR. POLLACK: Objection.  
 2 A. Yes.  
 3 Q. Also working with the drivers while they were  
 4 out on the road making their deliveries to try to  
 5 assist them if they were having difficulties with  
 6 specific deliveries?  
 7 A. Yes.  
 8 Q. Collecting manifests at the end of the delivery  
 9 routes from drivers?  
 10 MR. POLLACK: Objection.  
 11 A. Yes.  
 12 Q. Looking at some manifests, but not all, to  
 13 determine whether bags were being returned?  
 14 MR. POLLACK: Objection.  
 15 A. Yes.  
 16 Q. When you began working at Baltic Street, did  
 17 you have any other responsibilities other than those I  
 18 have just listed?  
 19 A. I was responsible for gathering information  
 20 based on the manifests and creating reports for  
 21 customer service and for inventory purposes. I was  
 22 doing payroll, but that was before the move to Baltic.  
 23 Q. That was before the move to Baltic?  
 24 A. Yes.  
 25 Q. When did you first start doing payroll?

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1 A. Yes.  
 2 Q. Your responsibilities as of the time that you  
 3 began working at Baltic Street consisted of  
 4 distributing routes?  
 5 A. Yes.  
 6 Q. Distributing manifests?  
 7 A. Correct.  
 8 Q. Recruiting and interviewing new drivers?  
 9 MR. POLLACK: Objection.  
 10 A. Yes.  
 11 Q. Asking drivers to sign this agreement, that you  
 12 had testified about earlier?  
 13 MR. POLLACK: Objection.  
 14 A. Yes.  
 15 Q. Working with Fresh Diet's customer service  
 16 department regarding customer complaints?  
 17 A. Yes.  
 18 Q. Investigating customer complaints?  
 19 MR. POLLACK: Objection.  
 20 A. Yes.  
 21 Q. Speaking to drivers about customer complaints?  
 22 MR. POLLACK: Objection.  
 23 A. Yes.  
 24 Q. Determining whether a financial penalty was  
 25 warranted on the driver or not?

103

1 A. I don't remember.  
 2 Q. But you recall at some point in time you  
 3 acquired the responsibility to do payroll?  
 4 A. Yes.  
 5 Q. This was for the drivers?  
 6 A. Yes.  
 7 Q. How would you do payroll for the drivers?  
 8 A. I don't understand. What do you mean by "how"?  
 9 Q. Were you responsible for determining what the  
 10 drivers would be paid each week?  
 11 MR. POLLACK: Objection.  
 12 A. If you are asking if I set the pay scale, no.  
 13 Q. No. I am not asking about the pay scale.  
 14 Would you calculate how much they would be paid for  
 15 that week?  
 16 MR. POLLACK: Objection.  
 17 A. Yes.  
 18 Q. How would you calculate how much each driver  
 19 should be paid?  
 20 A. Based on their stops and miles they drove.  
 21 Q. This was a new responsibility that you acquired  
 22 while you were at Siegel Street; is that correct?  
 23 A. Yes.  
 24 Q. So before Siegel Street, you were not doing  
 25 this?

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